

UNITED STATES DISTRICT COURT
DISTRICT OF NEW MEXICO

**FEDERATED SERVICE INSURANCE
COMPANY, a Minnesota Corporation,**

Plaintiff,

vs.

06-CV-638 JAP/WDS

DANNY MARTINEZ,

Defendant.

AMENDED MEMORANDUM OPINION AND ORDER

Contemporaneously with the entry of this Amended Memorandum Opinion and Order, the Court entered a Memorandum Opinion and Order Granting Motion For Reconsideration (Doc. No. 75), which granted "Plaintiff Federated Service Insurance Company's Motion For Reconsideration of the Memorandum Opinion and Order and Partial Summary Judgment Entered August 2, 2010" (Doc. No. 60). The Court enters this Amended Memorandum Opinion and Order in place of the Memorandum Opinion and Order (Doc. No. 58), which the Court has withdrawn.

I. Background

On July 14, 2006, Plaintiff Federated Service Insurance Company ("Federated") brought this lawsuit against Defendant Danny Martinez ("Martinez") asking for a declaratory judgment that Federated has no obligation to pay UM/UIM benefits to Martinez under a Commercial Package Policy (No. 0634062) (the "Policy"). Federated issued the Policy to Martinez's employer, Capitol Motor Company ("Capitol"). Federated claims that Martinez is not entitled to UM/UIM coverage under the Policy for catastrophic injuries Martinez suffered on May 11, 2005

when he was struck by an uninsured motorist while Martinez was working as a salesman on Capitol's premises. Federated denied Martinez's claim on the ground that Capitol had rejected UM/UIM coverage for its non-management employees, like Martinez. The parties filed cross motions for summary judgment primarily on the issue of whether Capitol had validly rejected UM/UIM coverage for its non-management employees under New Mexico law.¹ On August 31, 2007, the Court issued a Memorandum Opinion and Order (Doc. No. 38) and entered Partial Summary Judgment (Doc. No. 39) in favor of Federated. The Court concluded that Capitol had validly rejected UM/UIM coverage for all of its non-management employees, including Martinez, and the Court entered summary judgment in favor of Federated on its claims and on all but one of Martinez's counterclaims. The Court also denied Martinez's motion for summary judgment. On request by both parties, the Court stayed proceedings and certified the Partial Summary Judgment as a final judgment under Fed. R. Civ. P. 54(b). On December 17, 2007, Martinez appealed the Partial Summary Judgment to the Tenth Circuit Court of Appeals.

On July 8, 2010, the Tenth Circuit Court of Appeals issued its Order and Judgment reversing this Court's holding that Federated had obtained a sufficient rejection of UM/UIM coverage from Capitol for its non-management employees. (Ord. J. at 8.) The Tenth Circuit remanded the case for "additional proceedings not inconsistent with th[e] order and judgment."

Federated Serv. Inc. Co. v. Martinez, No. 07-2293, 2010 WL 2690076 (10th Cir. Jul 08, 2010).

¹ In New Mexico, all automobile insurance policies must provide uninsured motorist coverage unless such coverage is specifically rejected by the named insured. *See* NMSA 1978, § 66-5-301 (1978). New Mexico regulations also require that "[t]he rejection of the provisions covering damage caused by an uninsured or unknown motor vehicle as required in writing by the provisions of Section 66-5-301 NMSA 1978 must be endorsed, attached, stamped or otherwise made a part of the policy of bodily injury and property damage insurance." N.M. Admin. Code § 13.12.3.9 (2004).

On August 2, 2010, this Court on remand issued a Memorandum Opinion and Order (Doc. No. 58) in which the Court granted Martinez's motion for summary judgment and denied Federated's motion for summary judgment. On August 2, 2010, the Court also entered a separate Partial Summary Judgment (Doc. No. 59) in favor of Martinez ruling that Martinez "has uninsured motorist coverage for the May 11, 2005 accident under the Commercial Package Policy No. 0634062 issued by Plaintiff Federated Service Insurance Company insuring Capitol Motor Company." (Part. Summ. J. at 1.)

On August 6, 2010, Federated filed Plaintiff Federated Service Insurance Company's Motion For Reconsideration Of The Memorandum Opinion And Order And Partial Summary Judgment Entered August 2, 2010 (Doc. No. 60). On October 20, 2010, the Court granted Federated's Motion For Reconsideration. This Amended Memorandum Opinion and Order is entered in place of the August 2, 2010 Memorandum Opinion and Order (Doc. No. 58), which has been withdrawn.

II. Discussion

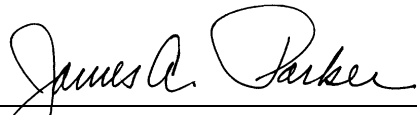
In the Order and Judgment, the Tenth Circuit Court of Appeals reversed this Court's grant of summary judgment in favor of Federated. The reversal, however, was limited to this Court's holding that Capitol had validly rejected UM/UIM coverage for its non-management employees, like Martinez. Because the reversal affected only the issue of rejection, several issues raised in the parties' 2007 cross motions for summary judgment remain undecided. In essence, the Court on remand must still decide whether, despite Capitol's failure to reject UM/UIM coverage for its employees like Martinez, Martinez can now claim coverage for his losses under the UM/UIM provisions of the Policy applicable to him. In addition, if the Court decides that Martinez has coverage under the UM/UIM provisions of the Policy, the Court must

also rule on Martinez's request for the stacking of coverage amounts to cover all of his current and future damages caused by the accident.

After remand, on August 18, 2010, Martinez filed Danny Martinez' Motion For Summary Judgment On Stacking Of Uninsured Motorist Coverage Under The Federated Service Insurance Company Policy (Doc. No. 62). On September 9, 2010, Federated filed 1) Plaintiff Federated Service Insurance Company's Motion For Summary Judgment On The Issue Of Uninsured/Underinsured Motorist Coverage (Doc. No. 66) ("Federated's Motion For Summary Judgment On Coverage"); 2) Plaintiff Federated Service Insurance Company's Motion For Summary Judgment On The Issue Of Stacking (Doc. No. 67) ("Federated's Motion For Summary Judgment On Stacking"); and 3) Plaintiff Federated Service Insurance Company's Response In Opposition To Defendant Danny Martinez's Motion For Summary Judgment On Stacking Uninsured Motorist Coverage Under The Federated Service Insurance Company Policy And Combined Memorandum In Support Of Its Motions For Summary Judgment (Doc. No. 68) ("Federated's Response To Martinez's Motion For Summary Judgment On Stacking"). On September 20, 2010, Martinez filed Martinez' Motion For An Extension Of Time, Until The Motion For Reconsideration Is Decided, To Respond To Plaintiff Federated's Summary Judgment Motion On UM/UIM Coverage And Request For An Expedited Ruling (Doc. No. 69) ("Motion For Extension"). The Court granted Martinez' Motion For Extension, and Martinez will be allowed until November 5, 2010 to file 1) a Response to Federated's Summary Judgment Motion On UM/UIM Coverage (Doc. No. 66); 2) a Response to Federated's Motion for Summary Judgment On Stacking (Doc. No. 67); and 3) a Reply to Federated's Response To Martinez's Motion For Summary Judgment On Stacking (Doc. No. 68).

IT IS THEREFORE ORDERED that

- 1) the Memorandum Opinion and Order (Doc. No. 58) is withdrawn and is replaced by this Amended Memorandum Opinion and Order;
- 2) a separate Amended Partial Summary Judgment will be entered granting the limited relief warranted on remand; and
- 3) Plaintiff Federated Service Insurance Company's Motion For Summary Judgment (Doc. No. 24) is denied.


UNITED STATES SENIOR DISTRICT JUDGE